

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0450P

Withholding Tax

For the month of March 2004

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of a monthly withholding tax return for the month of March 2004.

The taxpayer is a company residing in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the late penalty be abated as the taxpayer made a reasonable assumption. Since the taxpayer was filing quarterly in other states, the taxpayer assumed the filing for Indiana would be quarterly.

The Department let it be known upon the taxpayer's registration that early filing status was prompted by the amount of the taxpayer's withholding. Furthermore, the mailing labels were sent to the taxpayer the next day after the taxpayer registered.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was ignorant of its tax duties. Ignorance is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.